IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.7 OF 2007

M/s.Milap Brothers ...Petitioners

V/s.

Kandivali Co.Operative Industrial Estate Ltd & Ors. ...Respondents

Mr.F. Pooniwala with Mr.Y.R. Shah for Petitioners.
Mr.P.G. Lad AGP for Respondent No.1 to 3.
Mr.V.C. Ghosalkar for Respondent No.4 and 5.

CORAM : V.M. KANADE, J.
DATED : 12th APRIL, 2007.

P.C.:

1. Rule.

2. Heard learned counsel appearing on behalf of the Petitioners and the learned counsel appearing on behalf of the Respondents.

3. The Petitioners are challenging the order passed by the Joint Registrar of Co-operative Societies, dated 26th October, 2006 whereby certain directions were given by the Joint Registrar, of sealing two galas which are in possession of the Petitioners herein.

4. Brief facts which are relevant for the purpose of deciding this petition are as under:-

A plot of land was allotted by the Government to the Petitioners sometimes in the year 1969 admeasuring 1182 sq. mtrs. Accordingly, lease was executed in their favour by the Collector. The Petitioners inducted certain tenants in the said premises. On 12th March, 1975, the lease was terminated on account of breach of terms and conditions by the Petitioners. Thereafter, the Petitioners preferred an appeal before Additional Commissioner. The Additional Commissioner by his order dated 28th May, 1976 dismissed the appeal and confirmed the order of the Collector. He further directed that tenants who were in occupation of premises may be regularised. It is the case of the Petitioners that they continued to pay rent to the Collector even after the said order. In the meantime, suit was filed by the Syndicate Bank against the Petitioners herein in this Court and the Court Receiver was appointed in respect of said two galas which are in possession of the Petitioners. The Court Receiver continued to be in possession of the said two galas till disposal of the suit which was finally disposed of on 21/02/1995 after the Petitioners settled the claim with

the Syndicate Bank. Thereafter, the Petitioners made an application to the Collector, seeking permission to re-start business and the same was granted on 12th May, 2003. Prior to that, the Tahsildar had sealed premises of the said two galas sometimes in 1996. The Collector by his order dated 12th May, 2003 permitting the Petitioners to re-start their business, directed that the seals should be removed which were put by the Tahsildar. He further directed that the Petitioners should comply with certain terms and conditions which are more elaborately mentioned in clause 4 and 5 of his order. It appears that thereafter on 28th May, 2003 on telephonic instructions of the Collector, the premises was again re-sealed and no speaking order was passed. The Petitioners were directed to again open seals by virtue order passed by the Collector dated 12th May, 2003 and certain directions were given by the Joint Registrar of Co-Operative Societies. Thereafter, impugned order was passed and the Joint Registrar directed that the premises should be again re-sealed.

5. The learned counsel appearing on behalf of the Petitioners inter-alia contended that the order which was passed by

the Joint Registrar was without jurisdiction since the Petitioners were not member of Co-operative Society. He further contended that the Respondent No.4 and 5 were also not members of the Co-operative Society and therefore, they did not have any locus to make complaint against the Petitioners. He further contended that land in question was still owned by the Government and the Society was formed only for the purpose of maintaining industrial estate and under such circumstances, the Joint Registrar did not have any jurisdiction in law to pass the impugned order.

6. The learned Government Pleader on the instructions from the Officer who is present in the Court submitted that the order of the Joint Registrar was patently without jurisdiction and therefore, said order should be set aside. He further submitted that the Petitioners should be directed to appear before the Director to Industries

7. In view of these submissions made by the learned Government Pleader on instructions from the Officer who is present in the Court, in my view, impugned order dated 26th October, 2006

which is annexed to Ex.SS of the Petition is quashed and set aside qua the Petitioners. The directions, if any, which may have given by the Joint Registrar qua the Respondent No.4 and 5 are not set aside. The Respondents are at liberty to issue fresh notice to the Petitioners and pass an appropriate order after giving personal hearing to the Petitioners.

8. It is clarified that the Petitioners shall co-operate with the Respondents and the Authority which issues show cause notice and shall file reply within two weeks from the date on which show cause notice is served to them. The concerned authority shall thereafter expeditiously decide the said matter within a period of three months. All contentions of the parties are kept open.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.